

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA

DUBLIN DIVISION

DESI LEE HYMAN JACKSON,)	
)	
Plaintiff,)	
)	
v.)	CV 314-135
)	
SAM ZANDERS, Deputy Warden;)	
LT. JACOB BEASLEY, Unit Manager;)	
and CPT. IRA STRICKLAND, CERT Member,)	
)	
Defendants.)	

MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION

Plaintiff, an inmate presently incarcerated at Coffee Correctional Facility in Nicholls, Georgia, seeks to proceed *in forma pauperis* (“IFP”) in this action filed pursuant to 42 U.S.C. § 1983. For the reasons set forth below, the Court **REPORTS** and **RECOMMENDS** that Plaintiff’s request to proceed IFP be **DENIED** (doc. no. 2), and that this action be **DISMISSED** without prejudice.

I. BACKGROUND

A prisoner attempting to proceed IFP in a civil action in federal court must comply with the mandates of the Prison Litigation Reform Act (“PLRA”), Pub. L. No. 104-134, §§ 801-810, 110 Stat. 1321 (1996). 28 U.S.C. § 1915(g) of the PLRA provides:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

The Eleventh Circuit noted that “[t]his provision of the PLRA, commonly known as the three strikes provision, requires frequent filer prisoners to prepay the entire filing fee before federal courts may consider their lawsuits and appeals.” Rivera v. Allin, 144 F.3d 719, 723 (11th Cir. 1998) (internal citations omitted), *abrogated on other grounds by* Jones v. Bock, 549 U.S. 199 (2007). Section 1915(g) is constitutional because it does not violate an inmate’s right to access to the courts, the doctrine of separation of powers, an inmate’s right to due process of law, or an inmate’s right to equal protection. Id. at 721-27.

II. DISCUSSION

A. Dismissal Is Warranted Because Plaintiff Has Three Strikes

A review of Plaintiff’s history of filings reveals that he has brought at least three cases that were dismissed as frivolous or malicious or for failing to state a claim upon which relief may be granted: (1) Jackson v. Strickland, CV 313-072 (S.D. Ga. Mar. 24, 2014) (failure to exhaust administrative remedies) ; (2) Jackson v. Toby, CV 313-076 (S.D. Ga. Mar. 3, 2014) (failure to exhaust administrative remedies); (3) Jackson v. Ogletree, CV 313-084 (S.D. Ga. Mar. 3, 2014) (failure to exhaust administrative remedies); and (4) Jackson v. Danforth., CV 314-002 (S.D. Ga. July 7, 2014) (failure to state a claim). As these previous cases were dismissed for failure to state a claim, they qualify as strikes under § 1915(g). Rivera, 144 F.3d at 731 (dismissal of a prior suit for failure to exhaust administrative remedies counts as a strike under § 1915(g)). Because Plaintiff has at least three strikes under § 1915(g), he cannot proceed IFP in the present case unless he can demonstrate that he qualifies for the “imminent danger of serious physical injury” exception to § 1915(g).

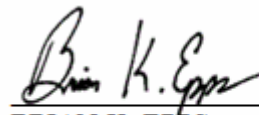
B. Plaintiff Does Not Qualify for the “Imminent Danger” Exception

In order to come within the imminent danger exception, a prisoner must be in imminent danger at the time he files suit in district court, not at the time of the alleged incident that serves as the basis for the complaint. Medberry v. Butler, 185 F.3d 1189, 1193 (11th Cir. 1999). Nothing in Plaintiff’s complaint supports a finding of imminent danger of serious physical injury at the time he commenced this case. Plaintiff’s claims all relate to incidents that occurred in 2012, and Plaintiff makes no allegations of danger around the time that he filed his complaint in November of 2014. Because Plaintiff does not assert that he was in any imminent danger of serious physical injury at the time he filed the complaint, he fails to demonstrate that he should be excused from paying the full filing fee under the “imminent danger” exception to § 1915(g)’s three strike rule.

III. CONCLUSION

For the reasons set forth above, the Court **REPORTS** and **RECOMMENDS** that Plaintiff’s motion to proceed IFP be **DENIED** (doc. no. 2), and that this action be **DISMISSED** without prejudice. If Plaintiff wishes to proceed with the claims raised in this lawsuit, he should be required to initiate a new lawsuit, which would require submission of a new complaint. Dupree v. Palmer, 284 F.3d 1234, 1236 (11th Cir. 2002).

SO REPORTED and RECOMMENDED this 17th day of December, 2014, at Augusta, Georgia.



BRIAN K. EPPS
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF GEORGIA